

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for September 28, 2005 PLANNING COMMISSION MEETING

PROJECT #: Miscellaneous #05021

PROPOSAL: To amend Title 26, Land Subdivision to modify City Council's action on a matters appealed to the City Council.

CONCLUSION: In conformance with the Comprehensive Plan.

<u>RECOMMENDATION:</u>

Miscellaneous #05021:

Approval

GENERAL INFORMATION:

ASSOCIATED APPLICATIONS: Change of Zone #05065 has been filed requesting similar language modifications on matters appealed to the City Council to various sections of Title 27, Zoning Code.

HISTORY: The City Law Department at the request of Councilman Jonathan Cook has filed this application to request the repeal of certain sections of Title 26, Land Subdivision as they exist currently by amending the text to such sections as they relate to City Council's action on matters appealed to them by aggrieved parties. The intent of such action is to clarify the language and provide full flexibility for the City Council in considering such appeals.

COMPREHENSIVE PLAN SPECIFICATIONS:

Examine ways of simplifying the development regulations and supporting documentation to encourage a broader understanding of planning concepts and their relevance to neighborhoods' and businesses' continuity and viability. (F-152)

ANALYSIS:

1. The following sections of Title 26, Land Subdivision are proposed to be repealed as they exist currently and amended: 26.11.037, 26.11.060, and 26.31.010.
2. Please see attached sections that are proposed to be amended:

Prepared by:

Joe Rexwinkle
Planner

DATE: September 15, 2005

APPLICANT: City Law Department at request of Councilman Jonathon Cook

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ORDINANCE NO. _____

1 AN ORDINANCE amending Title 26 of the Lincoln Municipal Code relating to the
2 Land Subdivision Ordinance by amending Sections 26.11.037, 26.11.060, and 26.31.010 to modify
3 the City Council's action on a matter appealed to the City Council; and repealing Sections 26.11.037,
4 26.11.060, and 26.31.010 of the Lincoln Municipal Code as hitherto existing.

5 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6 Section 1. That Section 26.11.037 of the Lincoln Municipal Code be amended to read
7 as follows:

8 **26.11.037 Commission Action on Preliminary Plat.**

9 If after public hearing the commission finds the proposed preliminary plat complies with the
10 requirements of this title, it shall approve the preliminary plat. The approval of the preliminary plat
11 shall not constitute authority for the subdivider to sell the individual lots.

12 If a governmental agency, other than the city, which is directly concerned with the proposed
13 subdivision with respect to schools, parks, playgrounds, fire stations, libraries, and other common
14 areas for public use, failed to file with the Planning Director its approval of or a report on the
15 preliminary plat, the commission may withhold its approval or disapproval of the preliminary plat
16 until such agency's approval or report is filed.

17 If after public hearing the commission finds that the proposed preliminary plat does not
18 satisfy the requirements of this title, it shall specify in writing in the minutes of the hearing the
19 objections to the proposed preliminary plat. The commission may disapprove or approve the
20 proposed preliminary plat upon the condition that the subdivider makes specific changes in the
21 proposed preliminary plat which will remove the objections and bring the proposed preliminary plat
22 into compliance with this title.

23 The action and findings of the Commission on the preliminary plat after public hearing shall
24 be filed with the City Clerk, and the person offering the proposed preliminary plat within seven days
25 from the action by the Planning Commission. One copy of the proposed preliminary plat and
26 findings shall be retained by the commission as part of its official records.

1 The subdivider, any council member, the Planning Director, the Public Works and Utilities
2 Director, or any aggrieved person may appeal any action of the Commission to the City Council by
3 ~~filing notice of appeal with the City Clerk within fourteen days following the action by the Planning~~
4 ~~Commission as provided in Section 26.31.010.~~

5 If any final plat on all or a portion of the approved preliminary plat is submitted five years
6 or more after the effective date of the preliminary plat, the city may require that a new preliminary
7 plat be submitted, pursuant to all the provisions of this chapter. A new preliminary plat may be
8 required if the subdivision ordinance, the design standards, or the required improvements have been
9 amended by the city; and as a result, the preliminary plat as originally approved does not comply
10 with the amended rules and regulations.

11 Section 2. That Section 26.11.060 of the Lincoln Municipal Code be amended to read
12 as follows:

13 **26.11.060 Action Required on Final Plat.**

14 (a) Upon receipt of the final plat, the Planning Director shall cause copies of the proposed
15 final plat and accompanying documents to be distributed to the Director of Public Works and
16 Utilities and other city departments and governmental agencies who are directly concerned with the
17 subdivision.

18 (b) Each department or governmental agency which is directly concerned with the
19 proposed subdivision shall, within ten days from receipt of a copy of the final plat, file with the
20 Planning Director its approval of said plat or a report indicating in what manner such final plat does
21 not conform to the requirements of this title and all other rules, regulations, and standards adopted
22 pursuant to this title over which such department has administrative responsibility.

23 (c) Within fifteen days from receipt of all the above reports, the Planning Director shall
24 notify the subdivider in writing of the recommended approval, conditional approval or disapproval
25 of the final plat based upon a review of the recommendations of the various departments and the
26 Director's own review of the design of the subdivision. If the Director finds that the final plat should
27 be conditionally approved, the notification shall set forth all conditions of approval and the amount
28 of all bonds or escrow of security agreements necessary to insure installation of all required
29 improvements. The Planning Director shall also furnish the subdivider a subdivision agreement to
30 be executed by the subdivider wherein the subdivider agrees to comply with all conditions of

1 approval and further agrees to construct the required improvements as provided therein. Upon
2 receipt of the fully executed subdivision agreement and acceptance of the required sureties by the
3 Law Department, the Planning Director shall sign the final plat, thereby indicating that the final plat
4 has been approved and it substantially conforms to the approved preliminary plat and the
5 requirements of this title at the time of approval of the preliminary plat and that all approved offers
6 of dedication are accepted. If the final plat does not substantially conform to the approved
7 preliminary plat, the Planning Director shall disapprove the final plat.

8 (d) Except for those plats that meet the requirements of Section 26.11.050(b), any council
9 member or aggrieved person may appeal any action of the Planning Director to the Planning
10 Commission, and any decision of the Planning Commission to the City Council by filing notice of
11 an appeal within fourteen days following the action being appealed. The appeal of the Planning
12 Director's action shall be filed with the Director, and the appeal of the Planning Commission's
13 action shall be filed with the City Clerk. In exercising its appellate jurisdiction, the action appealed
14 from shall be deemed advisory and the Planning Commission or City Council may make such
15 decision as ought to be made. If the Planning Commission approves a final plat and its action is not
16 appealed to the City Council, the final plat shall be signed by the Chairman of the Commission. If
17 the City Council approves a final plat after the appeal of the denial of such a plat by the Commission,
18 no further action shall be required by the Commission to approve such a plat. After approval thereof
19 by the City Council, the plat shall be returned to the Planning Department for signing by the
20 Chairman of the Commission. Thereafter, such plat shall be processed in accordance with the proce-
21 dures set forth in Section 26.11.070.

22 Section 3. That Section 26.31.010 of the Lincoln Municipal Code be amended to read
23 as follows:

24 **26.31.010 Modification of Requirements.**

25 Whenever a lot, tract, or parcel of land is of such unusual size or shape or is surrounded by
26 such development or unusual condition that the strict application of the requirements contained in
27 these regulations would result in actual difficulties or substantial hardship or injustice, the subdivider
28 may request a modification of such requirements. Such request shall be filed with the Planning
29 Director and shall set forth the specific modification requested and all supporting reasons and
30 documentation as to why the modification should be granted, how the public welfare will be

1 preserved, and why the modification will not detract from the intent and spirit of these regulations.
2 The Director shall distribute copies of the requested modification and the subdivider's statement and
3 accompanying data to other City departments and governmental agencies who are directly concerned
4 with the proposed modification. Each department or governmental agency which is directly
5 concerned with the proposed modification shall, within fifteen days from receipt of a copy of the
6 requested modification, file with the Planning Director notice of its approval of the requested
7 modification or a report stating why the modification should not be granted. Within thirty days from
8 the filing of the request for modification, the Planning Director shall notify the subdivider in writing
9 of the recommended approval or disapproval of the request. The request for modification will then
10 be scheduled on the Planning Commission agenda for public hearing and action as provided below.

11 (a) (1) If the requested modification is recommended for approval by the Planning
12 Director, the Planning Commission, after holding at least one public hearing on the requested
13 modification, may vary or modify such requirements so that the subdivider may develop the land in
14 a reasonable manner, but so that at the same time, the public welfare and interests of the city and
15 surrounding area are protected and the general intent and spirit of these regulations are preserved.

16 (2) Any aggrieved person or council member may appeal any action of the
17 Planning Commission to the City Council by filing a notice of appeal with the City Clerk within
18 fourteen days following the action of the Planning Commission. Upon receipt of the appeal by the
19 City Council, the Council shall hold a public hearing thereon within thirty days from the date of
20 appeal. Notice of the public hearing shall be given as provided in Section 26.11.036. In exercising
21 its appellate jurisdiction, the action appealed from shall be deemed advisory and ~~The City Council~~
22 ~~may after public hearing in conformity with the provisions of this title, reverse or affirm, wholly or~~
23 ~~partially, or may modify the action of the Planning Commission appealed from~~ make such decision
24 as ought to be made.

25 (b) If the Planning Director recommends denial of the requested modification, the
26 Planning Commission shall hold a public hearing on such request and make a report and
27 recommendation to the City Council regarding whether the modification should be granted or denied
28 and, if approved, how the public welfare will be preserved and why the modification, if granted, will
29 not detract from the intent and spirit of these regulations. The findings of the Commission after
30 public hearing shall be submitted to the City Clerk within seven days from the action by the Planning

1 Commission. After submittal of the findings of the Planning Commission to the City Clerk, the City
2 Clerk shall cause the requested modification to be placed on the agenda of the City Council for
3 approval by the City Council by resolution. The City Council, after holding at least one public
4 hearing on the requested modification, may modify such requirements so that the subdivider may
5 develop the land in a reasonable manner, but so that at the same time, the public welfare and interests
6 of the City and surrounding area are protected and the general intent and spirit of these regulations
7 are preserved.

8 Notice of the public hearings required under this section shall be provided pursuant to
9 Section 26.11.036 of this title. The minimum improvements set forth in Chapter 26.27 shall be
10 required unless specifically and individually waived by the Planning Commission or City Council
11 as provided above.

12 Section 4. That Sections 26.11.037, 26.11.060 and 26.31.010 of the Lincoln
13 Municipal Code as hitherto existing be and the same are hereby repealed.

14 Section 5. That this ordinance shall take effect and be in force from and after its
15 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2005:

Mayor